

South Carolina General Assembly
124th Session, 2021-2022

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Bill 3623

~~Indicates Matter Stricken~~

Indicates New Matter

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~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

April 28, 2021

H. 3623

Introduced by Reps. Murphy, Stavrinakis, Kimmons, Hart, Rutherford, Lucas, Dillard, Erickson, Hyde, W. Newton, Thigpen, Wheeler, R. Williams, Murray, Gilliard, Rivers, Brawley, Anderson, S. Williams, King, Alexander, McDaniel, Henderson-Myers and Govan

S. Printed 4/28/21--H.

Read the first time January 12, 2021.

A BILL

TO AMEND SECTION 24-13-150, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EARLY RELEASE OF AN INMATE, SO AS TO REDUCE THE PERCENTAGE OF TIME AN INMATE WHO HAS COMMITTED A "NO PAROLE OFFENSE" MUST SERVE BEFORE HE MAY BECOME ELIGIBLE FOR EARLY RELEASE, DISCHARGE, OR COMMUNITY SUPERVISION FROM EIGHTY-FIVE PERCENT TO SIXTY-FIVE PERCENT FOR CERTAIN DRUG OFFENSES, AND TO PROVIDE THIS REDUCTION APPLIES TO INMATES CURRENTLY INCARCERATED UNDER CERTAIN CIRCUMSTANCES; TO AMEND SECTION 44-53-370, RELATING TO THE UNLAWFUL POSSESSION, MANUFACTURE, AND TRAFFICKING OF CONTROLLED SUBSTANCES, SO AS TO REVISE THE PENALTIES AND WEIGHT PRESUMPTIONS, AND ELIMINATE MANDATORY MINIMUM SENTENCES; AND TO AMEND SECTION 44-53-375, RELATING TO THE UNLAWFUL POSSESSION, MANUFACTURE, AND TRAFFICKING OF METHAMPHETAMINE, COCAINE BASE, OR OTHER CONTROLLED SUBSTANCES, SO AS TO REVISE THE PENALTIES AND WEIGHT PRESUMPTIONS, AND ELIMINATE MANDATORY MINIMUM SENTENCES.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 24-13-150 of the 1976 Code is amended to read:

"Section 24-13-150. (A) Notwithstanding any other provision of law, except in a case in which the death penalty or a term of life imprisonment is imposed or subject to the provisions contained in subsection (B), an inmate convicted of a 'no parole offense' as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended. Nothing in this section may be construed to allow an inmate convicted of murder or an inmate prohibited from participating in work release, early release, discharge, or community supervision by another provision of law to be eligible for work release, early release, discharge, or community supervision.

(B) An inmate incarcerated for a 'no parole offense' as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least sixty-five percent of the actual term of imprisonment imposed if the conviction was pursuant to Section 44-53-370 or Section 44-53-375. The department's inmate records office must report no substantial or major disciplinary infractions. The inmate must have substantially completed a rehabilitation program and the department's reentry program. These percentages must be calculated without the application of earned work credits, education credits, or good conduct credits, not including any portion of the sentence which has been suspended.

(C) If an inmate sentenced to the custody of the Department of Corrections and confined in a facility of the department, confined in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, or temporarily confined, held, detained, or placed in a facility which is not under the direct control of the department, to include an inmate on a labor crew or any other assigned detail or placement, or an inmate in transport status, commits an offense or violates one of the rules of the institution during his term of imprisonment, all or part of the credit he has earned may be forfeited in the discretion of the Director of the Department of Corrections. If an inmate sentenced to a local detention facility or upon the public works of any county in this State, even when temporarily confined, held, detained, or placed in any facility which is not under the direct control of the local detention facility, to include an inmate on a labor crew or any other assigned detail or placement, or an inmate in transport status, commits an offense or violates one of the rules of the institution during his term of imprisonment, all or part of the credit he has earned may be forfeited in the discretion of the local official having charge of the inmate. The decision to withhold credits is solely the responsibility of officials named in this subsection."

SECTION 2. Section 44-53-370 of the 1976 Code is amended to read:

"Section 44-53-370. (a) Except as authorized by this article it shall be unlawful for any person:

- (1) to manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue;
- (2) to create, distribute, dispense, deliver, or purchase, or aid, abet, attempt, or conspire to create, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, deliver, or purchase a counterfeit substance.

(b) A person who violates subsection (a) with respect to:

- (1) a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than ~~fifteen~~ five years or fined not more than twenty-five thousand dollars, or both. For a second offense, the offender must be imprisoned not ~~less than five years nor~~ more than

~~thirty ten~~ years, or fined not more than fifty thousand dollars, or both. For a third or subsequent offense, the offender must be imprisoned not ~~less than ten years nor~~ more than ~~thirty fifteen~~ years, or fined not more than fifty thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item ~~for a first offense or second offense~~ may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. ~~Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted;~~

(2) any other controlled substance classified in Schedule I, II, or III, flunitrazepam or a controlled substance analogue, is guilty of a felony and, upon conviction, for a first offense must be imprisoned not more than ~~five~~ three years or fined not more than five thousand dollars, or both. For a second offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ~~ten~~ five years or fined not more than ten thousand dollars, or both. For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not ~~less than five years nor~~ more than ~~twenty ten~~ years, or fined not more than twenty thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item ~~for a first offense or second offense~~ may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. ~~Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted;~~

(3) a substance classified in Schedule IV except for flunitrazepam is guilty of a misdemeanor and, upon conviction, for a first offense must be imprisoned not more than three years or fined not more than three thousand dollars, or both. In the case of second or subsequent offenses, the person is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than six thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item ~~for a first offense or second offense~~ may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. ~~Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted;~~

(4) a substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, for a first offense must be imprisoned not more than one year or fined not more than one thousand dollars, or both. In the case of second or subsequent offenses, ~~the sentence must be twice the first offense~~ the offender is guilty of a misdemeanor and must be imprisoned not more than two years or fined not more than two thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item ~~for a first offense or second offense~~ may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. ~~Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsections (c) and (d), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.~~

(c) It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this article.

(d) A person who violates subsection (c) with respect to:

(1) a controlled substance classified in Schedule I (b) and (c) which is a narcotic drug or lysergic acid diethylamide (LSD) and in Schedule II which is a narcotic drug is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than two years or fined not more than five thousand dollars, or both. For a second or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both. ~~For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars, or both.~~ Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

(2) any other controlled substance classified in Schedules I through V is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than six months or fined not more than one thousand dollars, or both. For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than two thousand dollars, or both, except as provided in subsection (d)(4). Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

(3) cocaine is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. For a first offense, the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. For a second or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars, or both. ~~For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both.~~ Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits;

(4) possession of more than: ~~one gram~~ four grams of cocaine, one hundred milligrams of alpha- or beta-eucaine, ~~four grains~~ ten grains of opium, ~~four~~ ten grains of morphine, ~~two~~ ten grains of heroin, one hundred milligrams of isonipecaine, ~~twenty-eight grams or one ounce~~ ten ounces of marijuana, ~~ten~~ one hundred grams of hashish, ~~fifty~~ one hundred micrograms of lysergic acid diethylamide (LSD) or its compounds, ~~fifteen tablets, capsules, dosage units, or the equivalent quantity~~ four grams of 3, 4-methylenedioxymethamphetamine (MDMA), or twenty milliliters or milligrams of gamma hydroxybutyric acid or a controlled substance analogue of gamma hydroxybutyric acid, is prima facie guilty of violation of subsection (a) of this section. A person who violates this subsection with respect to ~~twenty-eight grams or one ounce~~ ten ounces or less of marijuana or ~~ten~~ twenty-eight grams or less of hashish is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days or fined not less than one hundred dollars nor more than two hundred dollars. Conditional discharge may be granted in accordance with the provisions of Section 44-53-450 upon approval by the circuit solicitor to the magistrate or municipal judge. As a part of a sentence, a magistrate or municipal judge may require attendance at an approved drug abuse program. Persons charged with the offense of possession of marijuana or hashish under this item may be permitted to enter the pretrial intervention program under the provisions of Sections 17-22-10 through 17-22-160. For a second or subsequent offense, the offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not less than two hundred dollars nor more than one thousand dollars, or both. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this item may have the sentence suspended and probation granted

and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.

When a person is charged under this subsection for possession of controlled substances, bail shall not exceed the amount of the fine and the assessment provided pursuant to Section 14-1-206, 14-1-207, or 14-1-208, whichever is applicable. A person charged under this item for a first offense for possession of controlled substances may forfeit bail by nonappearance. Upon forfeiture in general sessions court, the fine portion of the bail must be distributed as provided in Section 14-1-205. The assessment portion of the bail must be distributed as provided in Section 14-1-206, 14-1-207, or 14-1-208, whichever is applicable.

(e) Any person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of:

(1) ~~ten~~ twenty pounds or more of marijuana is guilty of a felony which is known as 'trafficking in marijuana' and, upon conviction, must be punished as follows if the quantity involved is:

(a) ~~ten~~ twenty pounds or more, but less than ~~one~~ two hundred pounds:

1. for a first offense, a term of imprisonment of not ~~less than one year nor~~ more than ten years, ~~no part of which may be suspended nor probation granted~~, and a fine of ten thousand dollars;

2. for a second offense, a term of imprisonment of not ~~less than five years nor~~ more than ~~twenty~~ fifteen years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifteen thousand dollars;

3. for a third or subsequent offense, a ~~mandatory~~ term of imprisonment of ~~twenty-five~~ not more than twenty years, ~~no part of which may be suspended nor probation granted~~, and a fine of twenty-five thousand dollars;

(b) ~~one~~ two hundred pounds or more, but less than ~~two~~ one thousand pounds, or more than one hundred to one thousand marijuana plants regardless of weight, a ~~mandatory~~ term of imprisonment of ~~twenty-five~~ not more than fifteen years, ~~no part of which may be suspended nor probation granted~~, and a fine of twenty-five thousand dollars;

(c) ~~two~~ one thousand pounds or more, but less than ~~ten thousand~~ pounds, or more than one thousand marijuana plants, ~~but less than ten thousand marijuana plants~~ regardless of weight, a ~~mandatory~~ term of imprisonment of ~~twenty-five~~ not more than twenty years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

(d) ~~ten thousand pounds or more, or ten thousand marijuana plants, or more than ten thousand marijuana plants regardless of weight, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;~~

(2) ~~ten~~ twenty-eight grams or more of cocaine or any mixtures containing cocaine, as provided in Section 44-53-210(b)(4), is guilty of a felony which is known as 'trafficking in cocaine' and, upon conviction, must be punished as follows if the quantity involved is:

(a) ~~ten~~ twenty-eight grams or more, but less than ~~twenty-eight~~ one hundred grams:

1. for a first offense, a term of imprisonment of not ~~less than three years nor~~ more than ten years, ~~no part of which may be suspended nor probation granted~~, and a fine of twenty-five thousand dollars;

2. for a second offense, a term of imprisonment of not ~~less than five years nor more than thirty~~ more than fifteen years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

3. for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not ~~less than twenty-five years nor~~ more than thirty ~~twenty~~ years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

(b) ~~twenty-eight~~ one hundred grams or more, but less than ~~one~~ four hundred grams:

1. for a first offense, a term of imprisonment of not ~~less than seven years nor~~ more than twenty-five ~~fifteen~~ years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

2. for a second offense, a term of imprisonment of not ~~less than seven years nor~~ more than thirty ~~twenty~~ years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

3. for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not ~~less than twenty-five years and not~~ more than thirty ~~twenty-five~~ years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

(c) ~~one~~ four hundred grams or more, but less than ~~two hundred grams~~, a ~~mandatory~~ term of imprisonment of twenty-five ~~not more than twenty~~ years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

(d) ~~two hundred grams or more, but less than four hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;~~

(e) ~~four hundred grams or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;~~

(3) four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210, or four grams or more of any mixture containing any of these substances, is guilty of a felony which is known as 'trafficking in illegal drugs' and, upon conviction, must be punished as follows if the quantity involved is:

(a) four grams or more, but less than fourteen grams:

1. for a first offense, a term of imprisonment of not ~~less than seven years nor~~ more than twenty-five ~~ten~~ years, ~~no part of which may be suspended nor probation granted, and~~ or a fine of not more than fifty thousand dollars, or both;

2. for a second or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of twenty-five ~~not more than fifteen~~ years, ~~no part of which may be suspended nor probation granted~~, and a fine of one hundred thousand dollars;

(b) fourteen grams or more but less than twenty-eight grams, a ~~mandatory~~ term of imprisonment of twenty-five ~~not more than fifteen~~ years, ~~no part of which may be suspended nor probation granted~~, and a fine of two hundred thousand dollars;

(c) twenty-eight grams or more, a ~~mandatory~~ term of imprisonment of not ~~less than twenty-five years nor~~ more than forty ~~twenty~~ years, ~~no part of which may be suspended nor probation granted, and~~ or a fine of two hundred thousand dollars, or both;

(4) fifteen grams or more of methaqualone is guilty of a felony which is known as 'trafficking in methaqualone' and, upon conviction, must be punished as follows if the quantity involved is:

(a) fifteen grams but less than one hundred fifty grams:

1. for a first offense, a term of imprisonment of not ~~less than one year nor~~ more than ten years, ~~no part of which may be suspended nor probation granted~~, and a fine of ten thousand dollars;
 2. for a second or subsequent offense, a ~~mandatory~~ term of imprisonment of ~~twenty-five~~ not more than fifteen years, ~~no part of which may be suspended nor probation granted~~, and a fine of twenty-five thousand dollars;
- (b) one hundred fifty grams but less than fifteen hundred grams, a ~~mandatory~~ term of imprisonment of ~~twenty-five~~ not more than twenty years, ~~no part of which may be suspended nor probation granted~~, and a fine of twenty-five thousand dollars;
- (c) fifteen hundred grams ~~but less than fifteen kilograms or more~~, a ~~mandatory~~ term of imprisonment of ~~twenty-five~~ not more than twenty-five years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;
- (d) ~~fifteen kilograms or more, a term of imprisonment of not less than twenty-five years nor more than thirty years with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of two hundred thousand dollars;~~
- (5) one hundred tablets, capsules, dosage units, or the equivalent quantity, or more of lysergic acid diethylamide (LSD) is guilty of a felony which is known as 'trafficking in LSD' and, upon conviction, must be punished as follows if the quantity involved is:
- (a) one hundred dosage units or the equivalent quantity, or more, but less than five hundred dosage units or the equivalent quantity:
1. for a first offense, a term of imprisonment of not ~~less than three years nor~~ more than ten years, ~~no part of which may be suspended nor probation granted~~, and a fine of twenty thousand dollars;
 2. for a second offense, a term of imprisonment of not ~~less than five years nor~~ more than ~~thirty~~ fifteen years, ~~no part of which may be suspended or probation granted~~, and a fine of forty thousand dollars;
 3. for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not ~~less than twenty-five years nor~~ more than ~~thirty~~ twenty years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;
- (b) ~~five hundred dosage units or the equivalent quantity, or more, but less than one thousand dosage units or the equivalent quantity:~~
1. for a first offense, a term of imprisonment of not ~~less than seven years nor~~ more than ~~twenty-five~~ fifteen years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;
 2. for a second offense, a term of imprisonment of not ~~less than seven years nor~~ more than ~~thirty~~ twenty years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;
 3. for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not ~~less~~ more than twenty-five years ~~and not more than thirty years, no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;
- (e) ~~one thousand dosage units or the equivalent quantity, or more, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of one hundred thousand dollars;~~
- (6) one gram or more of flunitrazepam is guilty of a felony which is known as 'trafficking in flunitrazepam' and, upon conviction, must be punished as follows if the quantity involved is:
- (a) one gram but less than one hundred grams:

1. for a first offense a term of imprisonment of not ~~less than one year nor~~ more than ten years, ~~no part of which may be suspended nor probation granted~~, and a fine of ten thousand dollars;
 2. for a second or subsequent offense, a ~~mandatory~~ term of imprisonment of ~~twenty-five~~ not more than fifteen years, ~~no part of which may be suspended nor probation granted~~, and a fine of twenty-five thousand dollars;
- (b) one hundred grams but less than one thousand grams, a ~~mandatory~~ term of imprisonment of not more than twenty years, ~~no part of which may be suspended nor probation granted~~, and a fine of twenty-five thousand dollars;
- (c) one thousand grams ~~but less than five kilograms or more~~, a ~~mandatory~~ term of imprisonment of ~~twenty-five~~ not more than twenty years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;
- (d) ~~five kilograms or more~~, a term of imprisonment of ~~not less than twenty-five years, nor more than thirty years, with a mandatory minimum term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted~~, and a fine of ~~two hundred thousand dollars~~;
- (7) fifty milliliters or milligrams or more of gamma hydroxybutyric acid or a controlled substance analogue of gamma hydroxybutyric acid is guilty of a felony which is known as 'trafficking in gamma hydroxybutyric acid' and, upon conviction, must be punished as follows:

- (a) for a first offense, a term of imprisonment of not ~~less than one year nor~~ more than ten years, ~~no part of which may be suspended nor probation granted~~, and a fine of ten thousand dollars;
- (b) for a second or subsequent offense, a ~~mandatory~~ term of imprisonment of ~~twenty-five~~ not more than fifteen years, ~~no part of which may be suspended nor probation granted~~, and a fine of twenty-five thousand dollars.

~~A person convicted and sentenced under this subsection to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release, as provided in Section 24-13-610, or supervised furlough, as provided in Section 24-13-710. Notwithstanding Section 44-53-420, a person convicted of conspiracy pursuant to this subsection must be sentenced as provided in this section with a full sentence or punishment and not one-half of the sentence or punishment prescribed for the offense.~~

The weight of any controlled substance in this subsection includes the substance in pure form or any compound or mixture of the substance.

The offense of possession with intent to distribute described in Section 44-53-370(a) is a lesser included offense to the offenses of trafficking based upon possession described in this subsection.

- (8) ~~one hundred tablets, capsules, dosage units, or the equivalent quantity~~, twenty-eight grams or more of 3, 4-methalenedioxymethamphetamine (MDMA) is guilty of a felony which is known as 'trafficking in MDMA or ecstasy' and, upon conviction, must be punished as follows if the quantity involved is:
- (a) ~~one hundred dosage units or the equivalent quantity~~, twenty-eight grams or more, but less than ~~five hundred dosage units or the equivalent quantity~~ one hundred grams:
 - (i) for a first offense, a term of imprisonment of not ~~less than three years nor~~ more than ten years, ~~no part of which may be suspended nor probation granted~~, and a fine of twenty thousand dollars;
 - (ii) for a second offense, a term of imprisonment of not ~~less than five years nor~~ more than ~~thirty~~ fifteen years, ~~no part of which may be suspended nor probation granted~~, and a fine of forty thousand dollars;

(iii) for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not ~~less than twenty-five years nor~~ more than thirty ~~twenty~~ years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

(b) ~~five one hundred dosage units or the equivalent quantity, grams or more, but less than one thousand dosage units or the equivalent quantity~~ four hundred grams:

(i) for a first offense, a term of imprisonment of not ~~less than seven years nor~~ more than twenty-five ~~fifteen~~ years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

(ii) for a second offense, a term of imprisonment of not ~~less than seven years nor~~ more than thirty ~~twenty~~ years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

(iii) for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not ~~less than twenty-five years and~~ not more than thirty ~~twenty-five~~ years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

(c) ~~one thousand dosage units or the equivalent quantity, four hundred grams or more, a mandatory term of imprisonment of twenty-five not more than twenty years, no part of which may be suspended nor probation granted~~, and a fine of one hundred thousand dollars.

(f) It shall be unlawful for a person to administer, distribute, dispense, deliver, or aid, abet, attempt, or conspire to administer, distribute, dispense, or deliver a controlled substance or gamma hydroxy butyrate to an individual with the intent to commit one of the following crimes against that individual:

- (1) kidnapping, Section 16-3-910;
- (2) trafficking in persons, Section 16-3-2020;
- (3) criminal sexual conduct in the first, second, or third degree, Sections 16-3-652, 16-3-653, and 16-3-654;
- (4) criminal sexual conduct with a minor in the first, second, or third degree, Section 16-3-655;
- (5) criminal sexual conduct where victim is legal spouse (separated), Section 16-3-658;
- (6) spousal sexual battery, Section 16-3-615;
- (7) engaging a child for a sexual performance, Section 16-3-810;
- (8) petit larceny, Section 16-13-30 (A); or
- (9) grand larceny, Section 16-13-30 (B).

(g) A person who violates subsection (f) with respect to:

(1) a controlled substance classified in Schedule I (b) or (c) which is a narcotic drug or lysergic acid diethylamide (LSD), or in Schedule II which is a narcotic drug is guilty of a felony and, upon conviction, must be:

(a) for a first offense, imprisoned not more than twenty years or fined not more than thirty thousand dollars, or both;

(b) for a second offense, or if in the case of a first conviction of a violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs,

imprisoned not ~~less than five years nor~~ more than thirty years, or fined not more than fifty thousand dollars, or both;

(c) for a third or subsequent offense, or if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not ~~less than fifteen years nor~~ more than thirty years, or fined not more than fifty thousand dollars, or both;

~~Except in the case of conviction for a first offense, the sentence in this item must not be suspended and probation must not be granted;~~

(2) any other controlled substance or gamma hydroxybutyrate is guilty of a felony and, upon conviction, must be:

(a) for a first offense, imprisoned not more than fifteen years or fined not more than twenty-five thousand dollars, or both;

(b) for a second offense, or if in the case of a first conviction of a violation of any provision of this subsection, the offender previously has been convicted of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not more than twenty years or fined not more than thirty thousand dollars, or both;

(c) for a third or subsequent offense, or if the offender previously has been convicted two or more times in the aggregate of a violation of the laws of the United States or of any state, territory, or district relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs, imprisoned not ~~less than five years nor~~ more than twenty-five years, or fined not more than forty thousand dollars, or both.

~~Except in the case of conviction for a first offense, the sentence in this item must not be suspended and probation must not be granted."~~

SECTION 3. Section 44-53-375 of the 1976 Code is amended to read:

"Section 44-53-375. (A) A person possessing less than ~~one gram~~ four grams of methamphetamine or cocaine base, as defined in Section 44-53-110, is guilty of a misdemeanor and, upon conviction for a first offense, must be imprisoned not more than three years or fined not more than five thousand dollars, or both. For a first offense the court, upon approval of the solicitor, may require as part of a sentence, that the offender enter and successfully complete a drug treatment and rehabilitation program. For a second or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than seven thousand five hundred dollars, or both. ~~For a third or subsequent offense, the offender is guilty of a felony and, upon conviction, must be imprisoned not more than ten years or fined not more than twelve thousand five hundred dollars, or both.~~ Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits.

(B) A person who manufactures, distributes, dispenses, delivers, purchases, or otherwise aids, abets, attempts, or conspires to manufacture, distribute, dispense, deliver, or purchase, or possesses with intent to distribute, dispense, or deliver methamphetamine or cocaine base, in violation of the provisions of Section 44-53-370, is guilty of a felony and, upon conviction:

(1) for a first offense, must be sentenced to a term of imprisonment of not more than ~~fifteen~~ five years or fined not more than twenty-five thousand dollars, or both;

(2) for a second offense, the offender must be imprisoned for not ~~less than five years nor~~ more than ~~thirty~~ ten years, or fined not more than fifty thousand dollars, or both;

(3) for a third or subsequent offense, the offender must be imprisoned for not ~~less than ten years nor more than thirty~~ fifteen years, or fined not more than fifty thousand dollars, or both.

Possession of ~~one~~ four or more grams of methamphetamine or cocaine base is prima facie evidence of a violation of this subsection. Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection ~~for a first offense or second offense~~ may have the sentence suspended and probation granted, and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. ~~Notwithstanding any other provision of law, a person convicted and sentenced pursuant to this subsection for a third or subsequent offense in which all prior offenses were for possession of a controlled substance pursuant to subsection (A), may have the sentence suspended and probation granted and is eligible for parole, supervised furlough, community supervision, work release, work credits, education credits, and good conduct credits. In all other cases, the sentence must not be suspended nor probation granted.~~

(C) A person who knowingly sells, manufactures, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ~~ten~~ twenty-eight grams or more of methamphetamine or cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), is guilty of a felony which is known as 'trafficking in methamphetamine or cocaine base' and, upon conviction, must be punished as follows if the quantity involved is:

(1) ~~ten~~ twenty-eight grams or more, but less than ~~twenty-eight~~ one hundred grams:

(a) for a first offense, a term of imprisonment of not ~~less than three years nor more than ten years, no part of which may be suspended nor probation granted;~~ and a fine of twenty-five thousand dollars;

(b) for a second offense, a term of imprisonment of not ~~less than five years nor more than thirty~~ fifteen years, ~~no part of which may be suspended nor probation granted;~~ and a fine of fifty thousand dollars;

(c) for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not ~~less than twenty-five years nor more than thirty~~ twenty years, ~~no part of which may be suspended nor probation granted;~~ and a fine of fifty thousand dollars;

(2) ~~twenty-eight~~ one hundred grams or more, but less than ~~one~~ four hundred grams:

(a) for a first offense, a term of imprisonment of not ~~less than seven years nor more than twenty-five~~ fifteen years, ~~no part of which may be suspended nor probation granted;~~ and a fine of fifty thousand dollars;

(b) for a second offense, a term of imprisonment of not ~~less than seven years nor more than thirty~~ twenty years, ~~no part of which may be suspended nor probation granted;~~ and a fine of fifty thousand dollars;

(c) for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of ~~not less than twenty-five years and not more than thirty~~ twenty-five years, ~~no part of which may be suspended nor probation granted;~~ and a fine of fifty thousand dollars;

(3) ~~one~~ four hundred grams or more, ~~but less than two hundred grams;~~ a ~~mandatory~~ term of imprisonment of ~~not more than twenty-five~~ twenty years, ~~no part of which may be suspended nor probation granted;~~ and a fine of fifty thousand dollars;

(4) ~~two hundred grams or more, but less than four hundred grams;~~ a ~~mandatory~~ term of imprisonment of ~~twenty-five years, no part of which may be suspended nor probation granted;~~ and a fine of one hundred thousand dollars;

(5) ~~four hundred grams or more;~~ a term of imprisonment of not less than twenty-five years nor more than thirty years with a ~~mandatory minimum~~ term of imprisonment of twenty-five years, ~~no part of which may be suspended nor probation granted;~~ and a fine of two hundred thousand dollars.

(D) Possession of equipment or paraphernalia used in the manufacture of cocaine, cocaine base, or methamphetamine is prima facie evidence of intent to manufacture.

(E)(1) It is unlawful for any person, other than a manufacturer, practitioner, dispenser, distributor, or retailer to knowingly possess any product that contains nine grams or more of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances. A person who violates this subsection is guilty of a felony known as 'trafficking in ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances' and, upon conviction, must be punished as follows if the quantity involved is:

(a) ~~nine~~ twenty-eight grams or more, but less than ~~twenty-eight~~ one hundred grams:

(i) for a first offense, a term of imprisonment of not more than ten years, ~~no part of which may be suspended nor probation granted~~, and a fine of twenty-five thousand dollars;

(ii) for a second offense, a term of imprisonment of not ~~less than five years nor~~ more than ~~thirty~~ fifteen years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

(iii) for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of not ~~less than twenty-five years nor~~ more than ~~thirty~~ twenty years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

(b) ~~twenty-eight~~ one hundred grams or more, but less than ~~one~~ four hundred grams:

(i) for a first offense, a term of imprisonment of not ~~less than seven years nor~~ more than ~~twenty-five~~ fifteen years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

(ii) for a second offense, a term of imprisonment of not ~~less than seven years nor~~ more than ~~thirty~~ twenty years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

(iii) for a third or subsequent offense, a ~~mandatory minimum~~ term of imprisonment of ~~not less than twenty-five years and~~ not more than ~~thirty~~ twenty-five years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

(c) ~~one~~ four hundred grams or more, ~~but less than two hundred grams~~, a ~~mandatory~~ term of imprisonment of ~~twenty-five~~ not more than twenty years, ~~no part of which may be suspended nor probation granted~~, and a fine of fifty thousand dollars;

(d) ~~two hundred grams or more, but less than four hundred grams~~, a ~~mandatory~~ term of imprisonment of ~~twenty-five~~ years, ~~no part of which may be suspended nor probation granted~~, and a fine of ~~one hundred thousand dollars~~;

(e) ~~four hundred grams or more~~, a term of imprisonment of not ~~less than twenty-five years nor~~ more than ~~thirty~~ years with a ~~mandatory minimum~~ term of imprisonment of ~~twenty-five~~ years, ~~no part of which may be suspended nor probation granted~~, and a fine of ~~two hundred thousand dollars~~.

(2) This subsection does not apply to:

(a) a consumer who possesses products:

(i) containing ephedrine, pseudoephedrine, or phenylpropanolamine in a manner consistent with typical medicinal or household use, as indicated by storage location, and possession of the products in a variety of strengths, brands, types, purposes, and expiration dates; or

(ii) for agricultural use containing anhydrous ammonia if the consumer has reformulated the anhydrous ammonia by means of additive so as effectively to prevent the conversion of the active ingredient into methamphetamine,

its salts, isomers, salts of isomers, or its precursors, or the precursors' salts, isomers, or salts of isomers, or a combination of any of these substances; or

(b) products labeled for pediatric use pursuant to federal regulations and according to label instructions primarily intended for administration to children under twelve years of age; or

(c) products that the Drug Enforcement Administration and the Department of Health and Environmental Control, upon application of a manufacturer, exempts because the product is formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, its salts, isomers, salts of isomers, or its precursors, or the precursors' salts, isomers, or salts of isomers, or a combination of any of these substances.

(3) This subsection preempts all local ordinances or regulations governing the possession of any product that contains ephedrine, pseudoephedrine, or phenylpropanolamine.

~~(F) Sentences for violation of the provisions of subsections (C) or (E) may not be suspended and probation may not be granted. A person convicted and sentenced under subsection (C) or (E) to a mandatory term of imprisonment of twenty-five years, a mandatory minimum term of imprisonment of twenty-five years, or a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years is not eligible for parole, extended work release as provided in Section 24-13-610, or supervised furlough as provided in Section 24-13-710.~~

~~(G)~~ A person eighteen years of age or older may be charged with unlawful conduct toward a child pursuant to Section 63-5-70, if a child was present at any time during the unlawful manufacturing of methamphetamine."

SECTION 4. The General Assembly finds that all the provisions contained in this act relate to one subject as required by Section 17, Article III of the South Carolina Constitution, 1895, in that each provision relates directly to or in conjunction with other sections to the subject of sentencing reform. The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in this act.

SECTION 5. The provisions of this act take effect upon approval of the Governor; however, the provisions of the act relating to parole eligibility apply retroactively to inmates currently serving an active incarcerative sentence, subject to any more specific requirements or restrictions as may be provided, and those provisions relating to the repeal of minimum sentences apply retroactively to inmates currently serving an active incarcerative sentence.

SECTION 6. Section 44-53-190(B) of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

"___. Fentanyl-related substances. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, that is structurally related to fentanyl by one or more of the following modifications:

- a. replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;
- b. substitution in or on the phenethyl group with alkyl, alkenyl, alkoxy, hydroxyl, halo, haloalkyl, amino or nitro groups;
- c. substitution in or on the piperidine ring with alkyl, alkenyl, alkoxy, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;

- d. replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; or
- e. replacement of the N-propionyl group by another acyl group.

This definition includes, but is not limited to, the following substances: Methylacetyl fentanyl, Alpha-methylfentanyl, Methylthiofentanyl, Benzylfentanyl, Beta-hydroxyfentanyl, Beta-hydroxy-3-methylfentanyl, 3-Methylfentanyl, Methylthiofentanyl, Fluorofentanyl, Thenylfentanyl or Thienyl fentanyl, Thiofentanyl, Acetyl fentanyl, Butyrylfentanyl, Beta-Hydroxythiofentanyl, Lofentanil, Ocfentanil, Ohmfentanyl, Benzodioxolefentanyl, Furanyl fentanyl, Pentanoyl fentanyl, Cyclopentyl fentanyl, Isobutyryl fentanyl, Remifentanil, Crotonyl fentanyl, Cyclopropyl fentanyl, Valeryl fentanyl, Fluorobutyryl fentanyl, Fluoroisobutyryl fentanyl, Methoxybutyryl Fentanyl, Isobutyryl fentanyl, Chloroisobutyryl fentanyl, Acryl fentanyl, Tetrahydrofuran fentanyl, Methoxyacetyl fentanyl, Fluorocrotonyl fentanyl, Cyclopentenyl fentanyl, Phenyl fentanyl, Cyclobutyl fentanyl, Methylcyclopropyl fenantyl."

SECTION 7. Section 44-53-370(e) of the 1976 Code is amended by adding an appropriately numbered item at the end to read:

"() four grams or more of any fentanyl or fentanyl-related substance, as described in Section 44-53-190 or 44-53-210, or four grams or more of any mixture containing fentanyl or any fentanyl-related substance, is guilty of a felony which is known as 'trafficking in fentanyl' and, upon conviction, may be punished as follows:

(a) four grams or more, but less than fourteen grams:

1. for a first offense, a term of imprisonment of not more than ten years, or a fine of not more than fifty thousand dollars, or both;

2. for a second or subsequent offense, a term of imprisonment not more than fifteen years and a fine of one hundred thousand dollars;

(b) fourteen grams or more but less than twenty-eight grams, a term of imprisonment of not more than fifteen years and a fine of two hundred thousand dollars;

(c) twenty-eight grams or more, a term of imprisonment of not more than twenty years or a fine of two hundred thousand dollars, or both;"

SECTION 8. This act takes effect upon approval by the Governor.

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